

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5530 OF 2007

Anil Harischandra Patil			Petitioner
V/s			
Archana Anil Patil			Respondent.

Mr.C.K.Tripathi, Adv. For the petitioner.

Mr.N.P.Bhavsar, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
8/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for hearing by consent of both the parties.

The present petitioner is the husband whereas the respondent is the wife. The marriage was solemnized according to Hindu Vedic Rites & Customs in the year 1987. There are two issues born out of the said wedlock viz. a daughter aged about 18 years and a son aged 15 years. The relations of the parties are strained on account of marital disputes. Three petitions are pending before the Family Court being Petition No.A-78/06 is filed by the present petitioner-husband seeking decree of divorce, Petition No.B-40/01 is filed by the respondent-wife seeking possession of matrimonial house on the basis of her title to the property and consequential eviction of the petitioner from the house. The last petition is C-116/01 which is filed by the respondent-wife claiming maintenance from the husband. All the three petitions are clubbed together and common evidence is being recorded. Evidence of the respondent-wife is closed whereas the affidavit in examination in chief of the petitioner has been filed on record. However the petitioner could not

be cross examined, as the petitioner could not remain present on 17.6.07. Counsel for the petitioner filed an application seeking adjournment. Application was opposed by the respondent. The Court rejected the adjournment application and proceeded to pass an order of closure of cross examination of the present petitioner and further ordered that the examination in chief of the petitioner will not be read in evidence. Thereafter the petitioner moved an application for recalling the order dated 27.6.07. The application for recalling of the order was moved on 6.7.07. The said application as well was opposed by the respondent and the Family Court has proceeded to reject the application for recalling of the order by observing that the petitioner is in arrears of maintenance in the sum of Rs.27,500/- till June, 2007 and has struck off the defence of the present petitioner. Aggrieved thereby present writ petition is filed.

2. As assured by the counsel for the petitioner he has paid the amount of arrears of maintenance in the sum of Rs.27,500/- to the wife on 2.8.07. Learned counsel for the petitioner submits that he could not attend the Court on 27.6.07 for reasons beyond his control on account of sudden ailment suffered by him on his way to the Court. It is submitted that miscarriage of justice would occur if the petitioner is denied opportunity to have decision on the merit of the matter. It is lastly submitted that the petitioner has shown his bonafide by paying arrears of maintenance and further assurance is given that hereafter the petitioner will not seek any adjournment before the Family Court and shall cooperate in the Family Court for expeditious disposal of the matter. Further statement is made that whatever inconvenience has been caused to the respondent on account of absence of the petitioner on 27.6.07 the respondent can very well be compensated in terms of money. Learned counsel for the respondent submits that the wife has seen the petitioner

on 27.6.07 in the court premises of Family Court and thus the reason for seeking adjournment was non-existent. It is also submitted that only with a view to protract and delay decision of the matters in Family Court the petitioner is avoiding to appear before the Court for cross examination. Taking over all view of the matter I am of the considered view that granting of an opportunity to the petitioner to participate in the proceedings would be in furtherance of cause of justice and would avoid miscarriage thereof. No doubt the respondents needs to be compensated. In the interest of justice the impugned order passed by the Family Court dated 27.6.07 so also dated 6.7.07 deserves to be quashed and set aside and I proceed to quash and set aside the said orders subject of payment of costs of Rs.10,000/- by the petitioner to the respondent. Costs shall be paid within a period of four weeks from today. I am informed that the case is no fixed on 3.9.07 on which date the petitioner shall appear before the Family Court and offer himself for cross examination and lead further evidence if he so chooses. I hope and trust that the Family Court shall proceed to decide the cases as expeditiously as possible preferably within a period of three months from today. Rule made absolute in above terms.

8.8.07